

EXHIBIT A

Dr. Thomas Marsoner – December 15, 2015

Page 1

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2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

3

4

In re)

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LEHMAN BROTHERS HOLDING INC.,) Chapter 11

6

et al.,)

7

Debtors.) Case No.

8

_____) 08-13555 (SCC)

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VIDEOTAPED DEPOSITION OF DR. THOMAS MARSONER

13

TUESDAY, DECEMBER 15, 2015

14

9:45 a.m.

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Video deposition of DR. THOMAS

20

MARSONER, taken by Lehman Brothers Holdings Inc.

21

and Lehman Brothers Commercial Paper Inc., at

22

the offices of Hogan Lovells, 875 Third Avenue,

23

New York, New York, before Brandon Rainoff, a

24

Federal Certified Realtime Reporter and Notary

25

Public of the State of New York.

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A P P E A R A N C E S

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WEIL, GOTSHAL & MANGES LLP

6

Attorneys for Lehman Brothers Holdings Inc. and

7

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2 address. Please state your address for the
3 record?

4 A. My resident address is number 20 Earls
5 Terrace, London W8 6LP.

6 Q. How long have you lived there?

7 A. Since April 2002.

8 Q. April 2002.

9 Have you had any other addresses since
10 April 2002 or have you been in the same place?

11 A. Yes, I've always had an Austrian
12 address, known under UK tax law as my domicile,
13 and that address is Andreas-Hofer-Strasse No.
14 43, 6020 Innsbruck, Austria.

15 Q. Any other addresses?

16 A. No addresses where one could serve
17 anything on me.

18 Q. Okay. Any vacation addresses?

19 A. I have generally spent my vacations in
20 hotels, on boats, occasionally with friends or
21 relatives. But certainly no useful
22 correspondence addresses other than these two.

23 Q. Are there any other addresses that you
24 characterize any other way, any other -- any
25 other place where you have spent your time

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2 Q. What was your position at Nomura?

3 A. At Nomura I was vice chairman in
4 investment banking and the managing director.

5 Q. When did you start at Nomura?

6 A. I started at Nomura in June of 2009.

7 Q. Where did you work prior to June of
8 2009?

9 A. I was, from April 2001 until September
10 15, 2008, a senior advisor to Lehman Brothers,
11 self-employed senior advisor.

12 Q. Okay.

13 A. But I did not advise anybody other
14 than Lehman Brothers during those years.

15 Q. How did you end up at Nomura?

16 A. After Lehman went bankrupt, the
17 European and the Asian operations of Lehman were
18 bought by Nomura and a couple of my old friends
19 at Lehman asked me whether I would be prepared
20 to come on board again full-time to help them
21 build things up in the new Nomura world.

22 Q. Who were those old friends at Lehman?

23 A. Primarily Christian Meissner and
24 Michael Bonacker.

25 Q. I'm sorry, what was the second name?

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2 A. Bonacker, B-O-N-A-C-K-E-R, who
3 approached me, who had the original idea that it
4 would make sense for me to join them on a
5 full-time basis again.

6 Q. So Meissner, Christian Meissner was
7 working at Nomura --

8 A. Yes.

9 Q. -- as well?

10 And Michael Bonacker was as well?

11 A. Yes.

12 Q. You testified that you were senior
13 advisor at Lehman Brothers from April 2001 to
14 September 15, 2008.

15 What were your responsibilities as
16 senior advisor?

17 A. They were relatively varied and
18 relatively wide. There was certainly a focus
19 geographically in areas where I was known to
20 have an expertise and speak the language,
21 specifically, of course, Austria, Germany,
22 Switzerland.

23 My last full-time job at Lehman had
24 been head of industry coverage, so all the
25 industry groups reported to me. Financial

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2 Q. Have you spoken to Peter Sherratt
3 about this matter?

4 A. I attended, as you will recall, his
5 deposition. My communication with him
6 beforehand you have, and on the way out
7 exchanged one or two civilized words.

8 Q. What about any phone calls with Peter
9 Sherratt?

10 A. No.

11 Q. Have you discussed this matter with
12 Jeremy Isaacs?

13 A. I once went to see Jeremy around this.
14 This was, I believe, still around the UK
15 proceedings when I had come across my e-mail to
16 Jeremy Isaacs thanking him for the coffee and
17 telling him that the most significant thing I
18 had done for him was F1.

19 So I thought that I'd go see him with
20 my little evidence book, told him my story. He
21 hummed, you hawed, he told me he would take a
22 look at the book and I have never heard from him
23 since. And I respected his request for privacy
24 as well.

25 Q. Had you filed a claim in the UK

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2 proceedings by that point?

3 A. Honestly I do not recall whether it
4 was before or after. I would assume that I had
5 gone to see him before I filed the UK claim but
6 that I'm not sure about.

7 Q. Okay. Did Jeremy Isaacs know that you
8 expected to be paid by Lehman Brothers Europe at
9 that time?

10 A. You have the e-mail. With that e-mail
11 it was my full intention to prepare the ground
12 for a later claim. I prepared that ground not
13 only with him but also with Bonacker and also
14 with Dick Fuld in August of '08, but that's all
15 I did.

16 It was well understood, it's
17 understanding, by many at Lehman at that time
18 that I was going to make a claim around that.

19 Q. It was well understood by Jeremy
20 Isaacs?

21 A. It was well understood by a whole
22 number of people at Lehman that I would make a
23 claim. That is why I attached to my thank you
24 e-mail to Jeremy Isaacs what I think is the
25 salient exchange with Tom Bernard.

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2 Q. Did Jeremy Isaacs know that you were
3 going to assert a claim against Lehman Brothers
4 Holdings Inc. or Lehman Commercial Paper Inc.?

5 A. The way Lehman worked, the way the
6 living Lehman worked, individual legal entities
7 were not considered material. He certainly
8 understood that I was going to make a claim
9 against Lehman.

10 Q. At that point you had informed him
11 that you were asserting a claim in the UK
12 proceedings, correct?

13 MR. VAN TOL: Object to the form, lack
14 of foundation.

15 A. I told you, I'm sorry, I do not have
16 that time line clear in my head. I do not know
17 whether, when I went to see Jeremy with my
18 little evidence book, whether I had already
19 filed the UK proceedings or I had not. I
20 suspect I had not because, as I think about it,
21 it was just an evidence book.

22 I'm not -- I'm not sure about the
23 timeline.

24 Q. Okay.

25 A. But we can actually look it up because

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2 foundation yet. That's privileged information.

3 MS. ALVAREZ: To the extent he
4 reviewed documents in preparation for this
5 deposition, we are entitled to know what he
6 reviewed.

7 MR. VAN TOL: That's correct, if you
8 can establish that it refreshed his
9 recollection. That's the test. You haven't
10 established that.

11 BY MS. ALVAREZ:

12 Q. Do you remember reviewing documents in
13 preparation for this deposition?

14 A. I just told you what documents I had
15 reviewed. I remember reviewing those.

16 Q. Okay. Are there any other documents
17 you remember reviewing?

18 A. I do not remember any other documents.

19 Q. Let's talk a little bit about Formula
20 One.

21 Please tell us how you came to work
22 on -- start from the beginning -- how you came
23 to work on Lehman's Formula One investment?

24 A. The origin of the Lehman Formula One
25 contact was when Ruggero Magnoni, Johann Ruppert

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2 and I went, at my suggestion, to the Monte Carlo
3 Grand Prix in 1998. I was still a full time
4 employee of Lehman at the time. This was the
5 time when the various Bernie Ecclestone
6 stratagems first became public.

7 So I suggested to a number of the
8 senior people at Lehman that this was likely
9 going to grow into a business opportunity for
10 Lehman. Ruggero is a close friend of Johann
11 Ruppert. Johann Ruppert owned a company called
12 Rothman at the time. Rothman sponsored the
13 Williams team, and Johann Ruppert and Ruggero
14 Magnoni had long planned to attend a Grand Prix
15 together, so we went there together which is
16 when Ruggero first met Bernie Ecclestone. I had
17 met Bernie before. And that is the moment when
18 it all started.

19 Q. How did that moment lead to Lehman's
20 investment in Formula One?

21 A. There were a whole number of different
22 transactions contemplated in various ways.
23 Ultimately Lehman financed Leo Kirch, the TV
24 rights entrepreneur and sports rights
25 entrepreneur, in his acquisition of 75 percent

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2

of the -- call it the Bernie Ecclestone company.

3

Lehman underwrote \$300 million of the

4

\$1.6 billion loan. JPMorgan underwrote the

5

other 300, and Bayerische Landesbank, the house

6

bank of Mr. Kirch, underwrote a billion.

7

Relatively soon after that loan was

8

given, Mr. Kirch's business went bankrupt and

9

Lehman managed to enforce the collateral and

10

took delivery at the time of the 17 percent

11

stake in Formula One. This is about 2002.

12

Q. What was your role in that financing

13

to Kirch?

14

A. Luckily for me, none, for the simple

15

reason that I had been asked what I thought of

16

Mr. Kirch and I truthfully responded that all my

17

German banking clients and friends had a very

18

low opinion of Mr. Kirch.

19

So I had no involvement whatsoever in

20

the loan itself, which is probably one of the

21

reasons why, when the loan had gone belly up, I

22

got the call, in that case it was Pignatti, who

23

used the words: Thomas, we're thinking about

24

intensifying our relationship with you again.

25

I had done as an advisor already, I

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2 ahead.

3 A. Yes, of course I refer to the

4 consultancy agreements, but what I really refer

5 to is the whole seven-year period during which I

6 worked seamlessly as a senior advisor to Lehman.

7 Since those were seven years and there

8 were only five consultancy agreements that only

9 ever had the span of one year, there were a

10 whole number of periods in which technically the

11 formal consultancy agreement was not in force.

12 It had expired or whatever.

13 Nothing changed in my dealings with

14 Lehman during the period when those did not

15 exist. The way it worked was with the rules of

16 the old agreement were carried forward until

17 such time as a new agreement was signed.

18 So this was a seamless seven-year

19 advisory relationship on a for-fees basis.

20 Q. Those consultancy agreements

21 identified which transactions you would be

22 assisting Lehman with, correct?

23 A. They identified some but by far not

24 all.

25 Q. We're going to go through those

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2 actually be okay to take a break now.

3 THE VIDEOGRAPHER: The time is 10:37

4 a.m. and we are going off the record.

5 (Recess)

6 THE VIDEOGRAPHER: This begins media

7 unit number two. The time is 10:49 a.m. and we

8 are back on the record.

9 BY MS. ALVAREZ:

10 Q. Okay, Dr. Marsoner. I'd like to talk

11 to you a little bit more about your role in

12 Lehman's Formula One investment.

13 I want to divide it up by time period.

14 So between -- before 2005, between 2002 and

15 2004, what was your role on Formula One for

16 Lehman?

17 A. At Vittorio Pignatti's request, I

18 watched the space very carefully, and when I saw

19 either a pitfall for Lehman or an opportunity, I

20 would either call Pignatti or send him an

21 e-mail. I think some thirty of those e-mails

22 have been dug out that I have sent to him,

23 sometimes copying Sherratt over the time period

24 between JPMorgan passing on my help and the

25 critical realization and exchange with Tom

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2 Bernard. So I was, in my self-perception,
3 working on this very regularly.

4 Q. How often would you speak to Pignatti
5 about Formula One?

6 A. Depends on -- depends on whether there
7 was anything urgent going on. When there was a
8 development that looked like it was either an
9 opportunity or a threat, could have been, you
10 know, on a weekly basis. During quiet periods I
11 might not have spoken to him about it for
12 months.

13 Q. You mentioned that you copied Peter
14 Sherratt on some of the e-mails.

15 A. Yeah.

16 Q. Did you speak to Peter Sherratt about
17 Formula One?

18 A. If at all, then very little. The
19 reason he was, my perception, involved in those
20 years is because there were so many little legal
21 pitfalls in the governance structure of F1. So
22 that for the banks just to go somewhere close to
23 exercising the 75 percent voting power that they
24 had, required very heavy duty legal lifting, and
25 there Sherratt was very involved and very good

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2 and very successful.

3 Q. Other than Pignatti and Sherratt, were
4 you in touch with anyone else at Lehman
5 regarding Formula One during this time period?

6 A. Yes, Magnoni to a much lesser degree.

7 Q. Anyone else?

8 A. No. I certainly can't recall anybody
9 else at this stage.

10 Q. Did you participate in any meetings
11 regarding Formula One during this time period?

12 A. Beyond the group that I mentioned,
13 which was primarily Pignatti and Magnoni with
14 whom I would meet periodically, and certainly in
15 those years I cannot recall a single meeting
16 with any of them where Formula One did not come
17 up, also because they had things to share with
18 me that I wasn't so privy to. The whole Ferrari
19 relationship was one where they were closer than
20 I was. So we certainly compared notes.

21 Q. Now, Pignatti was based in Europe,
22 correct?

23 A. Yes.

24 Q. So was Magnoni?

25 A. Yes.

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2 role.

3 Q. Do you know where Patrick Bierbaum was
4 based?

5 A. In London, I believe, if not in
6 Frankfurt. I do not know. With him I did not
7 interact. Schmitz-Morkramer was originally in
8 London and then in Frankfurt.

9 Q. Okay. So now let's take us to the
10 2005 time period.

11 What was your role in F1 from 2005
12 forward?

13 A. In 2005 after a number of not so happy
14 occurrences for the banks, including, which is
15 important here, a complete break down in their
16 discussions with both the teams and Ecclestone
17 in '04, there certainly surfaced first the rumor
18 and then the announcement that CVC had reached
19 agreement with Bayerische Landesbank to buy
20 Bayerische Landesbank's stake in F1.

21 That was huge news because the whole
22 crux of the issue was the longevity of the
23 franchise. Everybody always knew that F1 was
24 highly profitable year in, year out, but the big
25 risk that everybody saw was that this party

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2 could end at any year end, really. And when I
3 picked up that CVC was going to buy, I picked up
4 at the same time through my Austrian racing
5 connections that Ron Dennis of McLaren was fully
6 supportive of the CVC deal.

7 That was a financially, strategically
8 truly huge development, as Tom Bernard put it,
9 because if you looked at the world championships
10 for the 20 years leading up to 2005, about
11 two-thirds of them were either Ferrari victories
12 or McLaren victories. So Ferrari versus McLaren
13 was the race.

14 In the Ecclestone years, when
15 Ecclestone was essentially fighting the banks
16 from '02 to '05 after the breakdown in '04,
17 Ecclestone essentially bought off Ferrari. He
18 knew Ferrari was the team. Without Ferrari,
19 very difficult to run a championship. He
20 essentially cut them an annual check for \$50
21 million, which remained secret at the time, but
22 with that cash payment he broke Ferrari out of
23 the GPWC consortium. So the senior team in the
24 GPWC consortium was McLaren.

25 The moment it became clear that

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2 McLaren was supportive of CVC, the big value
3 impact in Formula One had gone away
4 automatically. What used to be -- what used to
5 be an annual circus had suddenly become a
6 multiyear circus with corresponding tremendous
7 uplift in value.

8 That was my -- I was the first to call
9 that, certainly at Lehman, and that was my major
10 contribution.

11 Q. How did you learn that McLaren was
12 supportive of CVC?

13 A. Originally from the Austrian circles.
14 More specifically it was something like Ron
15 Dennis telling Nicky Lauder telling my uncle
16 telling me. That was essentially my -- my
17 unique access to nonpublic information.

18 In addition to that, through my
19 watching brief on this for a number of years, I
20 knew fairly precisely which of the racing
21 journalists in which papers had good information
22 and which ones had bad information. So I could
23 triangulate quite well.

24 Q. One thing you said a couple minutes
25 ago was that F1 was a big risk -- that it was a

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2 their ultimate decision once the -- once the bid
3 was on the table which, of course, it wasn't
4 when I briefed him.

5 Q. Did Bernard tell you whether anyone at
6 Lehman was advising Lehman to sell its stake in
7 F1?

8 A. I do not know if it was Bernard, but I
9 was told at the time that the CVC coverage
10 banker, trying to do CVC a favor, was very much
11 in favor of selling to CVC. CVC was a very
12 important client of the firm, so doing CVC a
13 favor was certainly something that was popular
14 with those who made their living off of the CVC
15 relationship.

16 Q. Who told you that?

17 A. I believe it was Pignatti but I'm not
18 sure.

19 Q. Do you know if Pignatti was advising
20 Lehman to sell its stake?

21 A. Pignatti was fully aligned with me.

22 Q. Do you know whether Pignatti ever
23 informed anyone at Lehman that they should --
24 that it was his opinion that Lehman --

25 A. I'd be surprised if he had been.

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2 Q. -- should sell it's stake?

3 You'd be very surprised -- I'm sorry?

4 A. I would be very surprised if Pignatti

5 had advised Lehman to sell. The -- the

6 financial impact of this coordination with

7 McLaren was huge. You have a one or two-year

8 cash flow expectation of significant cash flows

9 that suddenly becomes, given that they are now

10 all in on it, a certainly seven, but probably 14

11 or 21-year proposition.

12 At that moment the value of Formula

13 One multiplied then and there. That was my

14 call. Pignatti understood it for sure. Magnoni

15 understood it for sure. Bernard understood it.

16 I had heard that there was opposition to it, but

17 it was mathematically so compelling that what

18 could have got wrong is if I hadn't gotten my

19 advice in immediately and if the CVC offer had

20 shown up first, there is a risk that some people

21 trying to curry favors with CVC would have said

22 nice things to CVC that the firm might have then

23 found difficult to retract.

24 Q. At the point that you were providing

25 this advice, did you discuss with anyone the

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2 possibility of being compensated for it?

3 A. I didn't have to. I was a paid
4 advisor. Terms were very clear.

5 Q. Because of the advisory services
6 agreements?

7 A. Yeah, absolutely, the 10 percent of
8 firm revenues had been set in stone from the
9 outset, and as the Cerberus BAWAG deal showed,
10 which was probably the second most important
11 thing I had done for Lehman, there was no
12 necessity to document that any further.

13 Q. So Lehman had agreed to pay you ten
14 percent of firm revenues for your advice in
15 Formula One?

16 A. Absolutely, for the simple reason that
17 those rules existed, were well understood by
18 everybody, and I was asked officially to help
19 out by one of the most senior people in Lehman
20 investment banking, Vittorio Pignatti. There
21 was nothing further that I needed to do or would
22 have actually been inclined to do.

23 Might Pignatti, in the way he
24 described it, have used the high negotiating
25 power that Lehman had to negotiate me down at

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2 some point in the future, he might well have.

3 Christian Meissner did not do that in BAWAG

4 Cerberus, and I'd like to sort of make it very

5 clear that while I am trying always to be very

6 constructive, the negotiation that would have

7 negotiated me down from the well established

8 general rule never took place, and a bankrupt

9 Lehman does not have the negotiating power that

10 the living Lehman would have had.

11 So the rules were in place. I was

12 officially asked to work on it. That is all

13 that matters.

14 Q. Where is this general rule that you

15 would be paid 10 percent documented?

16 MR. VAN TOL: Objection, asked and

17 answered. You can answer again.

18 A. Yeah. In every one of the agreements,

19 the specific one that was in force, the specific

20 one whose rules were in force at the time is the

21 '04 agreement. It says very clearly 20 percent

22 of the IBD fees, which in the case of M&A fees

23 means 20 percent of M&A fees, in the case of

24 financing fees it means 10 percent of firm

25 revenues, and in the case of holding gains, net

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2 of holding losses, it means 10 percent of those
3 net gains. The contract says that very, very
4 clearly.

5 MS. ALVAREZ: Why don't we take a look
6 at it?

7 (Marsoner Exhibit 4, Multipage
8 document bearing the heading Lehman Brothers,
9 dated 13th February 2004, addressed to Thomas
10 Marsoner, and bearing no Bates stamps, marked
11 for identification)

12 BY MS. ALVAREZ:

13 Q. So we have marked as Exhibit 4 the
14 letter agreement between Lehman Brothers Europe
15 Limited and Dr. Marsoner dated February 13,
16 2004.

17 This is the 2004 agreement that you
18 were just referring to?

19 A. I'm just looking at it.

20 (Pause)

21 Q. I'll represent this was attached as
22 Exhibit C to your motion as you can tell from
23 the header.

24 A. Sorry --

25 MR. VAN TOL: That was for us. Don't

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2 worry.

3 (Pause)

4 Q. I don't need you to look at the
5 provision now, I just want to make sure this is
6 the correct agreement.

7 A. Yes.

8 Q. And this agreement is dated February
9 13, 2004?

10 A. Correct.

11 Q. Then under the date I see your name
12 and an address?

13 A. Hm-hmm.

14 Q. What address is this?

15 A. This is the house of a friend of mine
16 in Malta where I stayed for a few days in that
17 time period, in the '04 time period. I have not
18 stayed since.

19 If I may digress, I'll tell you why
20 the first agreement had the Austrian address and
21 the last two had the Austrian address, but the
22 middle two had different addresses. It is
23 entirely UK tax driven. In the UK, perfectly
24 legally, for non-UK citizens would distinguish
25 between onshore income and offshore income.

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2 Q. Okay.

3 A. And it -- particularly in this time
4 period I did not want to have a cosmetic piece
5 of paper out there that suggested that I was --
6 that this income, which was classic legal
7 offshore income for UK purposes, was either
8 Austrian taxable or UK taxable. Has nothing to
9 do with the substance. This was just cosmetic.

10 Everybody at Lehman knew where to find
11 me, everybody at Lehman knew both my Austrian
12 domiciliary address and my London residency
13 address, and everybody at Lehman also knew that
14 this was tax cosmetics.

15 Q. When you say everybody at Lehman, you
16 are referring to your contacts on F1?

17 A. My contacts there, yes.

18 Q. So if you look at this agreement, it
19 is between Lehman Brothers Europe Limited and
20 you, correct?

21 A. I believe the whole Lehman Group is
22 encompassed by it, represented by Lehman
23 Brothers Europe Limited. You see in line 5 that
24 it says I will provide advice and assistance
25 also to other members of the Lehman Brothers

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2 I'll tell you that a few of these --
3 this is not the only one that's cut off, some of
4 the other -- the 2002, I think, and the 2006 are
5 cut off as well, so if you can look for the
6 full, complete copies.

7 MR. VAN TOL: We'll make the same
8 request to you.

9 THE WITNESS: Yeah.

10 MR. VAN TOL: Not to you, we are
11 making the same request to Lehman for a copy of
12 its own agreement.

13 BY MS. ALVAREZ:

14 Q. Right here -- so it says: Lehman
15 Brothers shall pay the consultant a fee based on
16 a to be agreed upon percentage of the net
17 investment banking revenue.

18 Was a percentage agreed upon between
19 Lehman and you for F1?

20 A. The percentage, 10 percent of firm
21 revenues is the default percentage that has been
22 in force at all times during the consultancy
23 period. It didn't have to be specifically
24 agreed another time. It was the well understood
25 fee for which I provided my services.

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2 Q. Where does it state in this agreement
3 that 10 percent was the default fee that you
4 would be paid under the consultancy?

5 A. If you look at all the agreements, you
6 will find 20 percent of IBD fees everywhere,
7 including in this one and the prior ones.

8 Q. Well, point it out to me. Where does
9 it say that you would be paid 10 percent as the
10 default role?

11 A. I'm trying to point out to you that it
12 was the agreed percentage, and the best place
13 for you to see that is probably the Graham
14 Wilson e-mail to me at the end of BAWAG Cerberus
15 which is appended as an exhibit to our motion
16 here. That is also not specifically captioned
17 in any one paragraph here, but that reflects
18 exactly the rule I just told you: 20 percent of
19 M&A fees, 10 percent of financing fees, 10
20 percent of net holding gains.

21 Q. So the Graham Wilson e-mail would be
22 the best place to look, not the actual
23 agreement?

24 A. The Graham Wilson e-mail is the best
25 place to look how, even without a specific

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2

reference in any one of the five agreements,

3

Lehman Brothers very happily paid the

4

agreed-upon percentages in a relatively major

5

transaction when this was a hundred million fees

6

and -- to Lehman, and nearly ten to me, without

7

it having been captioned in any one of those

8

individual points in any one of the individual

9

agreements.

10

Q. Other than BAWAG which we'll talk

11

about, what other transactions have you been

12

paid for that are not covered by your advisory

13

services agreements?

14

A. That I do not currently know. There I

15

would have to go back to my banking records.

16

Certainly BAWAG was the only major one. There

17

may well have been smaller ones, but I do not

18

currently -- I do not currently know that

19

offhand. I certainly know that the two biggest,

20

F1 and BAWAG Cerberus, were not in any paragraph

21

of any individual formal document.

22

Q. Let's take a look at this paragraph 39

23

that we were just looking at, and it refers to

24

in relation to any other agreed transaction.

25

Do you see that?

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2 A. I never did because I never needed to.

3 All I did is prepare the ground for such time as
4 revenues would become visible, which it turns
5 out only happened in 2012.

6 Q. So between 2005 and 2012, you never
7 put down in writing -- put down in writing how
8 much you would be paid by Lehman Brothers for
9 your assistance on F1?

10 MR. VAN TOL: Object to the form.

11 You may answer.

12 A. What I did put down in one of the
13 e-mails to Bernard and Pignatti and so on was a
14 sentence to the fact of -- that my senior advice
15 would continue to be available at the usual
16 modest percentage, something along those lines.
17 But that was not the request, that was a
18 statement of fact.

19 My prepare-the-ground conversation
20 with Jeremy Isaacs in 2007 then led to a
21 conversation between Sherratt and me. As I came
22 out of the room he asked me:

23 How did your chat with Jeremy go,
24 Thomas?

25 I said: Very well. And by the way,

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2 the F1 thing that we both worked on looks pretty
3 good these days, doesn't it, Peter?

4 To which he said: Yes, but we've also
5 had very high costs here.

6 And I reflected on that a little bit,
7 actually in fairly great detail, and I ended up
8 agreeing with him, which you see in the way I
9 presented my claim: A living Lehman in reality
10 only got its 300 million that it originally
11 invested in Kirch, plus a little bit of money
12 for interest and costs back.

13 So as long as Lehman was alive, no
14 firm revenues that would have triggered a fee of
15 mine had actually occurred. My source for that
16 was Sherratt after the conversation with Isaacs
17 and I actually agree. In fairness Lehman had
18 put 300 in and got a little bit more than 300
19 out but hadn't actually earned any cash before
20 its bankruptcy.

21 Q. What about -- were you aware of the
22 refinancing that occurred in 2006?

23 A. That's exactly what I meant with the
24 312 million or whatever the number is that is in
25 my statement of claim.

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2 Q. So during -- as a result of the
3 refinancing, the shareholders were paid
4 dividends, correct?

5 A. The shareholders were paid dividends
6 and Lehman got its 300 million back. That's
7 right.

8 Q. At that point did Lehman provide you
9 any compensation for your work on F1?

10 A. I didn't ask for it. Lehman had only
11 gotten its money back, 300 in, a bit more than
12 300 out. It could be argued that after interest
13 Lehman was actually still in the hole on F1 as
14 it went bankrupt.

15 Q. At that point --

16 A. There was certainly no profit that
17 would have, in fairness, triggered my fee.

18 Q. At that point you didn't raise with
19 anyone at Lehman the possibility of getting any
20 of that?

21 MR. VAN TOL: Objection.

22 Mischaracterizes evidence.

23 You may answer.

24 A. I very much prepared the ground. You
25 have the Jeremy Isaacs e-mail. You now have --

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2 apologies, I had not searched for that
3 earlier -- the Bonacker e-mail. But the history
4 of the Bonacker e-mails, there are actually two,
5 was interesting.

6 Bonacker, who at one point complained
7 to me that young Schmitz-Markramer was running
8 around the firm taking victory laps for F1. So
9 I said -- and that was difficult for Bonacker,
10 so I sent Bonacker those two e-mails to -- with,
11 I think -- I mean, you have them -- words to the
12 effect of: Look who really deserves the credit
13 for F1.

14 And then ultimately in August 2008 I
15 went to see Dick Fuld in New York about --
16 originally came to pass, it's in disclosure,
17 that he kindly called me after the Cerberus
18 people had told me, that it was actually I who
19 had done the Cerberus BAWAG deal.

20 And so, longer story, he ultimately
21 invited to come see him in New York City in
22 August of 2008, of all time periods. That's one
23 of those meetings one doesn't easily forget. As
24 I walked into his office he hugged me. I have
25 been relatively close to Dick in the past, but

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2 we have not really been on hugging terms before.

3 We then discussed a number of things,

4 particularly with my financial institution's

5 hat. And ultimately he said: So what else have

6 you been up to?

7 To which I said: Oh, Dick, in

8 addition to the essentially hundred million that

9 I made you on BAWAG Cerberus and a few other

10 things, by far the most important thing that

11 I've done for you was your F1 investment.

12 To which he -- and I see it in front

13 of me -- used a -- an old fashioned thank you

14 gesture as one does in old movies, followed by:

15 Now, Thomas, you'll forgive me, I have another

16 50,000 things to do.

17 And I left his office. So that was

18 exactly three weeks before Lehman filed.

19 Q. And --

20 A. So -- so -- but I certainly -- also

21 then that was certainly the last prepare the

22 groundwork that I had done. It certainly would

23 not have occurred to me in any way to ask Dick

24 to pay me a fee, and the chief reason for that

25 was that no revenues were visible.

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2 revenues never become visible, and then some die
3 and then there is no point in ever putting them
4 in.

5 In F1, revenues became visible for the
6 first time in 2012. In May 2012 and in August
7 2012 I made my claim to my contractual
8 counterpart LBEL.

9 Q. That claim was filed in the UK
10 proceedings, right?

11 A. It was first just filed with the UK
12 administrator. It was only after the UK
13 administrator rejected it that I commenced
14 proceedings.

15 Q. What happened in May 2012?

16 A. There was a very visible sell down by
17 CVC to a US asset management firm called Waddell
18 Reed who was joined by Blackstone and, I
19 believe, the Norwegian Sovereign Wealth Fund
20 that essentially took half of the CVC stake.

21 At the same time there was another big
22 refinancing. The details are in the landscape
23 piece of paper that I attached to my motion. It
24 was at that point that a valuation of F1 became
25 visible from the outside for the first time.

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2 And if I may add, Mr. Mackenzie, the
3 senior CVC partner, in about 2012 in one of the
4 Bernie Ecclestone legal proceedings, stated
5 under oath that as late as 2011 he, Mackenzie of
6 CVC, still thought that his stake may be worth
7 zero.

8 MS. ALVAREZ: Why don't we take
9 another break.

10 THE VIDEOGRAPHER: The time is 11:44
11 a.m. We are going off the record.

12 (Recess)

13 THE VIDEOGRAPHER: This begins media
14 number three. The time is 12:09 p.m. We are
15 back on the record.

16 BY MS. ALVAREZ:

17 Q. Dr. Marsoner, I would like to go back
18 and take a look at Exhibit 4 which was your 2004
19 consultancy agreement with Lehman.

20 Is this the agreement you rely -- is
21 this the agreement you rely on as the basis for
22 your claim?

23 A. It's the contents of the agreement
24 that I rely upon. Technically it had, of
25 course, expired, and technically it was

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2 just as it was managed when years before I was
3 still a Lehman employee recusing myself of all
4 beer matters and acting only -- and acting only
5 as a principal with Pignatti advising me.

6 We were always very careful to
7 precisely document in those years what I did as
8 an employee and what I would have done for this
9 company. But, again, it's not material here.
10 It was an offer that I made because I did sense
11 that a staid bank and a shareholder in Formula
12 One doesn't necessarily go together very easily.

13 As we have seen from JPMorgan getting
14 out, as we've seen from Bayerische Landesbank
15 getting out, F1 is high publicity, high drama,
16 not an obvious investment for a bank, although
17 as it turns out, a fantastic one.

18 Q. Other than your conversations with Tom
19 Bernard and Pignatti, did you have conversations
20 with anyone else at Lehman about whether Lehman
21 should retain its stake in Formula One?

22 A. During that time?

23 Q. Yes.

24 A. Magnoni for sure.

25 Q. Anyone else?

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2 A. Through Magnoni, by definition with
3 Dick Fuld. Magnoni was closest by far of all
4 the characters involved to Dick Fuld. Dick and
5 Magnoni spoke a lot, so I certainly made sure
6 that Magnoni was fully apprized of my views at
7 the time so as to make sure that Dick would know
8 about it.

9 Q. Did Magnoni ever --

10 A. Dick Fuld.

11 Q. I'm sorry, I didn't mean to cut you
12 off.

13 Did Magnoni ever tell you that he told
14 Dick Fuld?

15 A. Oh, yeah. The history, I think, some
16 of this has been -- has been said in previous
17 depositions, the history of this investment was
18 a personally somewhat difficult one for both
19 Dick Fuld and Ruggero Magnoni, because when
20 originally the Kirch loan was extended, my
21 understanding is that Ruggero proposed it in the
22 European Capital Commitments Committee or Credit
23 Committee or whatever actually turned it down,
24 whereupon Ruggero got on the plane to New York
25 and convinced Dick to do it anyway because it

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2 was so well collateralized, at which point Dick
3 overruled the committee and Lehman gave the
4 loan.

5 When that then blew up, it was not an
6 easy situation, certainly not for Ruggero, and,
7 you know, probably even something that Dick
8 didn't completely disregard.

9 Q. Okay. Then how do you know that
10 Magnoni kept Dick Fuld apprized of the advice
11 you were giving on F1?

12 MR. VAN TOL: Objection, asked and
13 answered. Go ahead.

14 A. Magnoni told me. Well, I know it from
15 Magnoni, but when I mentioned it to Dick at my,
16 for me, important meeting with him in August of
17 '08, Dick did not sound in the least surprised.

18 MS. ALVAREZ: I think it might be
19 lunch is there. Instead of me starting a new
20 subject, might as well take a break.

21 THE VIDEOGRAPHER: The time is 12:40
22 p.m. and we are off the record.

23 * * *

24 L U N C H R E C E S S

25 * * *

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2 * * *

3 A F T E R N O O N S E S S I O N

4 * * *

5 THE VIDEOGRAPHER: The time is 1:44

6 p.m. We are back on the record.

7 BY MS. ALVAREZ:

8 Q. Good afternoon, Mr. Marsoner. If we
9 could take a look at Exhibit 5 which is your
10 declaration that we previously marked.

11 If we could take a look at paragraph
12 ten, you state in the declaration: I later
13 advised Lehman on Cerberus' acquisition of
14 BAWAG, an Austrian bank, from April 2006 to
15 December 2006 for which LBHI paid me 20 percent
16 of the investment banking revenues generated
17 from the transaction, despite the fact that no
18 formal agreement expressly covered the BAWAG
19 transaction.

20 Do you see that?

21 A. I see that, yes.

22 Q. Would you please describe the BAWAG
23 transaction that you are referring to?

24 A. BAWAG is a significant bank in
25 Austria, the fourth largest, which the owner,

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2 the Austrian trade union organization, had to
3 sell for a number of complicated reasons that
4 don't matter here.

5 Lehman Brothers advised by me, advised
6 Cerberus on this acquisition which was
7 tactically relatively complicated and required a
8 relatively significant amount of prior knowledge
9 of how the Austrian trade union system worked,
10 how the bank worked.

11 It ended up as a three-party auction
12 where our client Cerberus competed with
13 Bayerische Landesbank and Lone Star, the other
14 US -- it is a distressed debt buying hedge fund.

15 My role, very similar to the F1 case,
16 was one where I really knew the in and outs and
17 the history that had led to the problems that
18 triggered the sale, and so I was able to
19 position Cerberus very early, again, very
20 similar to the F1 case because I saw that this
21 could only be in that case solved by a sale to a
22 new owner, just like F1 in November or so of
23 2005. Very, very fast paced.

24 It was no time for any sort of legal
25 niceties like drawing big advisory agreements.

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2 We had to work in a team. I contributed my
3 experience, and our client won the bid, was
4 very, very happy with us, actually even -- which
5 I am told is pretty rare in this business --
6 voluntarily increased the fee that Cerberus was
7 due to pay Lehman, and the -- when the closing
8 came around, Graham Wilson, who was the chief
9 administrative officer for Lehman in Europe,
10 essentially sent me an e-mail with a spreadsheet
11 which was part of the record here which totaled
12 up what I was due to receive which is 20 percent
13 of the M&A fee, being 10 percent of the very
14 significant financing fee, and also 10 percent
15 of two principal gains by Lehman, both around
16 swaps, then deducted from that the quarterly and
17 other retainer fees.

18 And I didn't have to negotiate that.
19 I didn't have it in any of the agreements,
20 didn't -- we didn't have to negotiate. It was
21 just an implementation of the established course
22 of dealings between Lehman and me completely,
23 you know, completely problem free.

24 Q. Now, you have told me a lot here so
25 we'll take it step by step.

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2 that was less than 5 percent of it. Cerberus
3 bought BAWAG for 3.6 billion Euros, and this
4 fund that Pignatti ran co-invested 150 million.
5 So this was a 5 percent co-invest --

6 MS. ALVAREZ: Okay.

7 THE WITNESS: -- that --

8 MS. ALVAREZ: Okay. Thank you.

9 BY MS. ALVAREZ:

10 Q. So if you look at this Exhibit 9, it
11 is an e-mail from you to Jeremy Isaacs dated
12 July 4th, 2007. The subject line reads: Thanks
13 for the coffee.

14 I think we covered this, but I'm going
15 to ask again.

16 Who is Jeremy Isaacs?

17 A. He was at the time the chief executive
18 officer of Lehman Brothers in Europe.

19 Q. Why did you send him this e-mail?

20 A. Primarily, of course, because I sent
21 thank you notes after people invite me for
22 coffee, and my well disclosed and blatantly
23 obviously visible ulterior motive was, of
24 course, the usual, call it victory laps, call it
25 bragging, call it positioning. I would probably

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2 prefer the word positioning, in which I just
3 wanted to put on the record that the Formula One
4 investment that was already looking very good.
5 At that point in time was really primarily based
6 on my timely and correct advice that the senior
7 guy, with all due modesty, in my view correctly
8 characterized as: That's huge.

9 So it was to prepare the ground for an
10 eventual fee claim when and if revenues would
11 become visible.

12 Q. Did you tell Jeremy Isaacs that you
13 were expecting to be paid for Formula One?

14 A. This was a coffee with a very senior
15 guy. He had invited me. To the best of my
16 knowledge it was very clear to him what I meant
17 both over the coffee and then when I, you know,
18 set it out. But I certainly remained both
19 polite and there was no reason to jump the gun.
20 Revenues were not then visible.

21 Q. So, then, at this point in time you
22 didn't say anything to him about -- or you are
23 saying dropping the gun, you didn't drop the
24 gun, you didn't tell him that you expected to be
25 paid?

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2 A. I think one can say things quite
3 clearly without putting them prematurely and
4 impolitely. I think by appending my claim to
5 fame e-mails I made very clear what I was
6 implying here. But I didn't do more than imply
7 it, I didn't want to do more, didn't need to do
8 more. It wasn't the time.

9 But I did feel -- I did feel the need
10 to establish with the senior decision makers at
11 Lehman that the way I looked at it, the F1
12 investment was very much my deal. The reason I
13 was so motivated to make that point at the time
14 was because at least at the time I had come to
15 the conclusion that both Jeremy, chief executive
16 Europe, and certainly Dick Fuld, had heard not
17 from my dear colleagues at Lehman about my role
18 in Cerberus BAWAG, but from the Cerberus guys.

19 Q. Looking at the text of your e-mail,
20 you identify three transactions, Formula One
21 being the third transaction.

22 The first one you identify is Telecom
23 Austria, right?

24 A. Yeah.

25 Q. Was Telecom Austria covered by an

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2 called -- the administrator equivalent of Lehman
3 in the US.

4 Q. You say in the e-mail that you would
5 like to just find out where you stand on it to
6 see if a project of mutual interest could ensue.

7 What project of mutual interest are
8 you referring to?

9 A. There were a whole number that were
10 imaginable including, but not limited to selling
11 the stake again. And I will not -- I will not
12 hesitate to freely admit that a part of the
13 motivation of writing this e-mail was the same
14 motivation that led me to write the Isaacs
15 e-mail, the Bonacker e-mail, the Fuld
16 conversation, just make sure it was widely known
17 that around F1 and Lehman, my hat was in the
18 ring.

19 Q. Did you inform Bruce Matthews that you
20 expected to be paid for Formula One?

21 A. Again, revenues were a long way from
22 visible at the time. Just like with all the
23 other prepare-the-ground conversations, there
24 was nothing that I could charge my 10 percent
25 on.

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2 to get my LBCC margin balance back.

3 Q. I want to ask you about a couple of
4 addresses.

5 Do you recognize the address -- and I
6 may not pronounce these right, I probably
7 won't -- Casa Andreas 16 Trig Sant Adrija Lija
8 BLZ10 Morocco.

9 Do you recognize that address?

10 A. Well, absolutely not. That is
11 definitely a nonexisting address because it has
12 elements of the Maltese address that is on my
13 '04 agreement, but it obviously also has the
14 country Morocco that is relatively far away from
15 Malta.

16 Q. So let's focus on the Maltese address.

17 What is that an address to?

18 MR. VAN TOL: Objection, asked and
19 answered. You may answer again.

20 A. That's the address of the house of a
21 friend of mine in Malta.

22 Q. Okay.

23 A. Where I happened to be once in the '04
24 time period.

25 Q. Do you know if a bar date notice

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2 arrived at that house?

3 A. I never got anything from that house.

4 I used, as I described to you, as a non-UK,

5 non-Austrian address for pure tax cosmetics

6 purposes.

7 Q. Does your friend still live in that

8 house?

9 A. I do not know. I do not know if he

10 still owns it.

11 Q. Do you recognize the address Casa

12 Peliganos, Costa Keretas? Do you recognize that

13 as an address?

14 A. That I recognize. That is a house

15 that at one point I had rented in Mexico for a

16 three-week family holiday.

17 Q. Did you use that address on any

18 contracts with Lehman Brothers?

19 A. I'm not sure that I used it on any

20 contract, but I would assume that I or rather my

21 secretary must have put it on an invoice or two

22 that I probably sent -- sent to Lehman, where,

23 again, for tax cosmetic purposes I preferred a

24 non-UK, non-Austrian address.

25 Q. Okay. What about the address Casa

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2 Carrion Parco, San Giacomo?

3 Do you recognize that?

4 A. That's the address of a holiday flat

5 of my -- then of my father's, only Garda in

6 northern Italy.

7 Q. Did you ever stay there?

8 A. I occasionally stayed there for

9 periods never exceeding a few days and only

10 during the summer. No mail is received there.

11 There is not even a mailbox or a -- there is not

12 even a sort of a slit in the door where one

13 could put mail in because it would be pointless.

14 Q. Did you ever include that address on

15 any contracts with Lehman Brothers?

16 A. I do not believe I put that on a

17 contract but, again, I may well have put it on

18 an invoice.

19 If I was in the general area at the
20 time, I might well have told my assistant for
21 the often enough discussed tax cosmetic purposes
22 to put that address on the invoice.

23 Q. Does your father still own that flat?

24 A. My father had two flats in that house
25 which a year ago he gave to his two sons.

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2 firm made \$388,000 in that case, and another
3 principal gain out of a notional interest rate
4 swap by the firm again made \$552,000.

5 As per the formula in the '04
6 agreement -- by the way, also know the other
7 agreements -- that principal gain was, again,
8 divided 50-50 between the fixed income
9 department and investment banking, 20 percent
10 thereof, or 10 percent of firm revenues produced
11 the amount that I was owed.

12 Q. In the third line down in the top box
13 there is a reference to M&A fee.

14 Could you explain what that is?

15 A. The M&A fee is the mergers and
16 acquisitions fee. That belonged to the
17 investment banking department alone. Fixed
18 income had no share in that, and my 20 percent
19 of M&A fees remained 20 percent, so that in this
20 case I was paid nearly 2.8 million Euros out of
21 the M&A fee that Lehman made for Cerberus BAWAG.

22 Q. Why did you refer to the Graham Wilson
23 spreadsheet several times during your testimony
24 today?

25 A. Because it shows so very clearly that

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2 these percentages did not have to be in any
3 specific formal agreement. These percentages
4 were agreed between Lehman and me throughout our
5 advisory relationship. This was not in the '04
6 agreement, this was not in the '06 agreement.
7 It was exactly, like Formula One, governed by
8 the text and spirit of the '04 agreement and, as
9 you can also see in the previous discussion
10 between Pignatti and Meissner not involving me
11 in any way, completely noncontroversial between
12 all of various senior Lehman decision makers.

13 Q. Let's go back to that exhibit, please,
14 Exhibit 7, the e-mail exchange you were just
15 talking about.

16 A. Yeah.

17 Q. Do you see that in this e-mail
18 exchange there is at least two e-mails from you,
19 correct? There is the original one from you to
20 Mr. Pignatti, and then there is one on page 201
21 from, again, you to Mr. Pignatti, correct?

22 A. That's right, yes.

23 Q. I don't see any reference in those to
24 10 percent.

25 Why did you not say to Mr. Pignatti:

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -

IN THE MATTER OF

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,
Debtors.

- - - - -

DEPOSITION OF RUGGERO MAGNONI

VOLUME I

Tuesday, November 17th, 2015

AT: 2:30 p.m.

Taken at:

Hogan Lovells
50 Holborn Viaduct
London
EC1A 2FG
London
United Kingdom

CONFIDENTIAL

Court Reporter:

Chris Lang
Accredited Real-time Reporter

1 A P P E A R A N C E S

2 Appearing for Lehman Brothers:

3 MAURICE HORWITZ, ESQ.
4 DENISE ALVAREZ, ESQ.
5 WEIL, GOTSHAL & MANGES LLP
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9 Appearing for Dr Thomas Marsoner:

10 M. SHANE JOHNSON, ESQ.
11 PIETER VAN TOL, ESQ.
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13 875 THIRD AVENUE
14 NEW YORK, NY 10022
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16 Appearing for the Debtors:

17 THOMAS E. HOMMEL, ESQ.
18 LEHMAN BROTHERS HOLDINGS INC.
19 1271 AVENUE OF THE AMERICAS
20 NEW YORK, NY 10020

21 NOTARY: MICHELLE SCOTT-BRYAN

22 VIDEOGRAPHER:

23 WENDY VINER
24 Videographer
25

1 a view and I know that a lot of people at the firm
2 wanted to just sell and get rid of it. It was also the
3 years where we were making truck loads of money so
4 losing 300, having already put them in the books, kind
5 of, in a firm that was making billions, was not very
6 important. So I know this as being a very pointed
7 discussion. Tom Bernard was the person I wanted to tell
8 you before.

9 Q. Okay.

10 A. Tom was really the arbiter in the end of what to
11 do, because he was a very senior guy. He had been the
12 head of credit at the firm. He was retiring, I think in
13 the Rocky Mountains, if I remember, to stay with a kid
14 that wasn't well or something. There was some family
15 reason why. And the firm basically, like with Thomas,
16 said please stay on, even if you are in Aspen, or
17 whatever, Sand Valley, I don't know where it was.
18 Please, stay on, follow some of the difficult deals that
19 we have inherited for the bank, because you know the
20 history, you are the top, senior guy in the firm, stay
21 with us, don't disappear. And from there, I think,
22 I remember calls to the Rockies, and he was formulating a
23 vision of whether to hold or sell. And thank God he
24 decided not to sell, I understand by leaning a lot
25 Thomas' vision, which was the only completely in favor

1 vision within the firm because I wasn't sure what was
2 good to do. I don't know if you asked Patrick
3 Schmitz-Morkramer, he was involved. I don't think any
4 of us were sure what was better for the firm. There was
5 this maniac called Thomas Marsoner who called everyone
6 saying "no, we can't sell, this is going to be the best
7 thing in the world. We can't sell it." I know that
8 there was a threat at that point that the famous
9 Concorde agreement, which was the pact between Ferrari
10 and the other major squads, the teams, and Bernie, who
11 was a very peculiar character, I must say, I know him
12 very well.

13 Q. You are talking about Bernie Ecclestone?

14 A. Yes.

15 Q. Okay.

16 A. Very peculiar, very strange bird. And, you know,
17 you can't trust him, 100 percent, or 50 percent. You
18 really have to have your own opinion. The basic reason,
19 I am really telling you guys because I am strong on it,
20 the thing could have been worth zero or a lot and it
21 depended at that moment on whether the Goldman led
22 group, which was called GPW, Grand Prix World or
23 whatever, was an association of the smaller teams, which
24 excluded Ferrari, which by the way, Ferrari is like 50
25 percent of Formula 1, Luca di Montezemolo, an old friend

1 of mine, had agreed to stay with Bernie. The point was
2 what the others would do, because you can't race against
3 yourself; by definition, race meaning having opponents.

4 McLaren was the strongest team at that time and it
5 had just won the championship, they had a great engine,
6 da, da, da. So critical was to assert whether McLaren
7 was going to stay with Bernie or go with the splinter
8 group. I don't know. And I understand Thomas went to
9 war on that. And he turned what was a widespread
10 skepticism by many of the senior guys into the very bold
11 decision by Bernard, which I think must have consulted
12 Dick, it must have told him look, there is a chance of
13 making 10 times, or losing 300 million, what would you
14 go? Because that was the type of bet. We didn't know
15 ten times, but there is a way to make a lot more, or,
16 you know, basically crystallize a bad loan, Ruggero's
17 bad loan; mine.

18 So I heard back that that was going on and actually
19 I was asked what I thought and I said I didn't really
20 know which way to go. And I know that that decision,
21 2005, was very, I would call it fatale, very important,
22 and not obvious. So that is, that answers your
23 question?

24 Q. Yes, thank you.

25 A. You didn't want me to say, why were you against?

1 Spain to a smaller extent, or Benelux, or Scandinavia,
2 Germany. The truth is that Thomas acted as our senior
3 German speaking and very well plugged in partner, even
4 if he wasn't any more a member of the firm to speak of.

5 Q. And you mentioned the Concorde agreement and
6 McLaren information that Dr. Marsoner provided?

7 MS. ALVAREZ: Objection to form.

8 A. Yes.

9 Q. In your view was this valuable information?

10 MS. ALVAREZ: Objection to form.

11 A. Okay, I think I said before, and I wanted to say
12 very clear, without Thomas I doubt the firm would have
13 stayed into Formula 1. That is my impression, I don't
14 have any, how would you call it, evidence. But the
15 level of understanding of Formula 1 was so feeble at the
16 firm, because the Americans didn't know Formula 1. The
17 Europeans here were just only mildly interested. It was
18 Thomas banging on everybody's doors to tell them what
19 was going to happen with McLaren and I remember I was
20 involved in that discussion. Again, I didn't have
21 a strong opinion either way, but I know Thomas called
22 everyone from Jeremy down in Europe to make sure that we
23 would consider very, very seriously CVC's proposal as
24 being totally inadequate.

25 Q. And at this point were people across different

1 Lehman entities involved in the F1?

2 MS. ALVAREZ: Objection to form.

3 A. I can't remember. Because we acted as one, you
4 know. Entities didn't make any sense to us, you know,
5 Commercial Paper, or, you know, I was vice chairman of
6 the group. Period. So I couldn't really remember who
7 booked what, where. Remember, we were a fraternity of
8 partners working like, really, a pack to go out and get
9 things done and in the best interests of the firm.
10 I don't know who was where in the structure. I couldn't
11 care less, to tell you the truth.

12 Q. Right.

13 A. There was one boss. An executive committee. And
14 we were all involved in creating value for our
15 shareholders and for ourselves.

16 Q. And did the F1 investment end up being profitable?

17 MS. ALVAREZ: Objection to form.

18 A. So let us go back a second. So we transformed
19 a busted loan, because that is what it was, Kirch Media
20 couldn't pay back its loans into securities. The others
21 were worthless because the companies below, ProSieben,
22 Premiere, needed more money and the firm wasn't willing,
23 that is why I am saying Formula 1, if it wasn't for
24 Thomas, probably we would not have kept it, because in
25 both cases, ProSieben, which is worth a fortune now and

1 is the most successful private broadcaster in Germany,
2 and Premiere, which is Sky, were both calling for
3 capital increases, rights offerings. And the firm
4 didn't want to participate, against my strong advice.
5 Because I wanted to and just, they told me, look, you
6 already lost 500 million, would you please not knock at
7 our door. Go out and make money and try to clean your
8 reputation up, right. Dick used to call me and say
9 "Ruggero, I know you are down, but I have lost much more
10 money than you in my life and if you don't lose money
11 you are never going to make money". Yes, but I feel
12 terrible. He said "go, just make more money for us".
13 It was a stain in my curriculum. I saw the firm not
14 willing, not being willing to follow me on all of these
15 recovery roads. And Peter Sherratt, who is a friend and
16 a very -- I have lots of time for him, was really very
17 conservative, and basically was saying let us cut, let's
18 cut our losses and go home. So nobody really wanted to
19 double up on the pieces that we had received from
20 Kirch's busted loan. That is why I am saying that
21 I don't think that we would have kept Formula 1 if
22 JP Morgan, whom we thought knew more than us, and
23 generally they did as a team, knew more, if it wasn't
24 for Thomas and I think Patrick, also, Schmitz-Morkramer,
25 who was young but very smart, and people thought he was,

1 so there was a strong opinion by those two that we
2 shouldn't sell. So is it profitable? I think it is
3 a profitable investment. I don't know exactly when we
4 are going to get out -- we meaning the Lehman estate --

5 THE COURT REPORTER: Sorry, could you repeat that?

6 A. Whatever has been paid so far and I know because
7 Ferrari, I know all of the guys, I am close friend of
8 the Mercedes guys, and I was very close to the former
9 chairman of and COO of Mercedes, still appear am, but he
10 is former, he is not any more, Jurgen Schrempp, and I am
11 a close, not as close friend as Jurgen Schrempp, very
12 close, a personal friend, and his successor, Dieter
13 Zetsche, who I know very well, and I am the chairman of
14 the Italian chapter of the foundation called Laureus,
15 who is jointly financed by Daimler and Richemont, which
16 I am on the board of. So any way, that gives me -- so
17 I knew, and I have always been close to Laureus so
18 I know how important it is for Mercedes so I know how
19 much the business creates. And in the years I maintain
20 a good relationship with Bernie because Bernie called me
21 several times in the last few years to see whether
22 I could find a buyer of the CVC stake. So I went back
23 to see, you know, the murder scene and I know how much
24 they make, so it is a profitable venture, for sure.

25 Q. Okay. I wanted to go back to the advisory

1 agreements, Thomas' advisory agreements. You said you
2 were aware of them.

3 A. I was aware that Thomas had been retained by my
4 friend Vittorio, who was a very important person in our
5 firm from 2003. So let me tell you again, because you
6 have to understand. Telecom Italia, we helped to buy
7 Telecom Italia in 1999. In 2001, our man, our guy,
8 Colannino, was booted out by Pirelli and Benetton. We
9 stopped being the bankers to Telecom Italia. And that
10 freed me and Vittorio from a very profitable day to day
11 job, because it was one of the most active M&A clients
12 in the firm. So Vittorio moved back to London, I moved
13 back to London to do, me principal, he M&A. Okay.
14 Germany being our weak point, I knew, and we discussed
15 it with Vittorio, that he wanted to maintain Thomas on
16 board as an adviser. I haven't seen the papers,
17 because, you know, that was his responsibility, but
18 I knew that Thomas continued as our adviser across the
19 board.

20 Q. Do you know how he was paid under those agreements?

21 A. We had a standard deal with our advisers.

22 Q. Okay.

23 A. Which would, may, vary in the proportion, in the
24 share. But it was always if you are a success, we will
25 give you part of what we make. And usually, because

1 I knew afterwards, that was about 10 percent of banking
2 or 20 percent of banking or 10 percent of the firm's,
3 was what normally was given to advisers. It was given
4 to me, too, afterwards.

5 Q. Okay.

6 A. So that is a kind of a standard --

7 Q. Okay.

8 A. -- piece of paper. But no, I have not seen his
9 actual engagement.

10 Q. Okay. Now, are you receiving anything from
11 Dr. Marsoner in exchange for this deposition here today?

12 A. You are offending me. You are kidding, right? No,
13 the answer is no, and I would never have done anything
14 of that type.

15 Q. Why are you providing testimony today?

16 A. Because he asked me to say the truth. He wrote me
17 about two years ago. He asked me about two years ago to
18 say what I knew. And Vittorio also, you know, Vittorio
19 and I are very close friends, really very close. And he
20 told me to say if I knew that what he was saying was
21 true, which I did at that time, in 2004, I think. And
22 then 2015, I was asked to say more clearly, and I did.

23 Q. Okay. Could we hand Mr. Magnoni exhibit 6, please.

24 MS. ALVAREZ: From which deposition?

25 MR. JOHNSON: The first one.

1 particular year, so it was so big that quite a big
2 number of people were involved, but I can't remember.

3 Q. Okay. Now, at this point you were not involved in
4 the day to day with regards to Formula 1?

5 MR. JOHNSON: Objection. Leading.

6 A. At that point I was, in that point I was. As
7 I said, slowly new people were added and only after, as
8 I said, I think, it is taped, I believe one year later
9 I was asked by the firm, by Jeremy and Dick, to loosen
10 up a bit, leave it to the guys in the recovery to try to
11 get the money back, because it was not a good use of my
12 valuable origination time.

13 Q. Okay. Let's take a look at the last sentence in
14 the letter you submitted to the court. It says:

15 "It was well understood by the Lehman decision
16 makers that Dr. Marsoner's fees normally amounted to 10
17 percent of firm's revenues."

18 Do you see that?

19 A. Yes.

20 Q. Who did you mean by Lehman decision makers?

21 A. The ones that I have told you before, anybody --
22 when we do, when we decided to have advisers we knew
23 that there was a share. The normal share of the firm
24 was 10 percent. Now, 10 percent gross, 20 net, I don't
25 know. But there was an understanding that to have

1 advisers and finders there was a standard agreement, to
2 tell you the truth, around investment banking in Wall
3 Street and the City. Particularly at Lehman, we had
4 a 10 percent approach. So it was well known by everyone
5 from Jeremy and Roger Nagioff and I am sure, I can say
6 myself, that that was the norm and therefore was pretty
7 well understood by everyone.

8 Q. Did you negotiate any consultancy agreements for
9 any advisers?

10 A. Including mine, yes.

11 Q. Did you negotiate, were you involved in the
12 negotiations of Dr. Marsoner's?

13 A. No.

14 Q. So you don't know if he was ever retained for
15 Formula 1?

16 A. I don't know.

17 MR. JOHNSON: Objection. Leading.

18 A. I assumed, like everybody else, that if he was
19 working willingly with us, and Vittorio was the entry
20 point of that negotiation, that normally would have had
21 -- I didn't know.

22 Q. Did you ask anyone whether Lehman would pay
23 Dr. Marsoner?

24 A. Not at all.

25 MR. JOHNSON: Objection. Leading.

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
IN THE MATTER OF

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,
Debtors.

- - - - -
DEPOSITION OF VITTORIO PIGNATTI

VOLUME I

Monday, November 16th, 2015

AT: 3:30 p.m.

Taken at:

Hogan Lovells
50 Holborn Viaduct
London
EC1A 2FG
London
United Kingdom

CONFIDENTIAL

Court Reporter:

Chris Lang
Accredited Real-time Reporter

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24 Videographer
25

1 Q. Okay. To your understanding why did Lehman
2 Brothers want to hire Dr. Marsoner as an adviser?

3 MS. ALVAREZ: Objection to form.

4 A. Mr. Marsoner continued his previous involvement, so
5 it was an evolution, it wasn't a hiring process, which
6 was quite normal with senior people who departed a full
7 time position at Lehman, they seldom -- unless they went
8 to work for a competitor, they were offered a choice to
9 stay on as an adviser, some with retainers, you know, we
10 had a lot of freedom on how to calibrate their
11 involvement.

12 Q. Did Dr. Marsoner have certain expertise?

13 MS. ALVAREZ: Objection to form.

14 A. Yes he did. By sector and by geography. He had
15 spent almost his entire working career dealing with
16 Germany and Austria and financial institutions, which
17 gave him a, for a firm that was not particularly strong
18 in that part of the world, considerable senior hedge in
19 terms of relationships and understanding of situations
20 that were not obvious, especially in situations of work
21 outs or complicated deals.

22 Q. And what about F1?

23 A. F1 was a complicated deal. So he met those
24 criterias and there were German banks involved.

25 Q. And is it correct that you were a contact person

1 42.

2 A. Okay. Spotted it. 22, yes.

3 Q. You see listed February 13, 2004?

4 A. Mm-hm.

5 Q. And section 3, if you turn the page.

6 A. Mm-hm.

7 Q. Entitled "compensation payable to the consultant".

8 A. Yes.

9 Q. Could you explain this section of the agreement?

10 A. The section of this agreement, this was the second
11 one. There was a prior one so, you know, this was
12 stepping in. So we had decided to take part of his
13 time, so we paid an up front fee and then we paid
14 a quarterly fee and then went through the specifics of
15 the transactions that were covered and then, if I am
16 right, we had a possibility to bring under this
17 contract, subject to my green light, I think, other
18 things. So at that time we had the role in Austria, and
19 Germany, Oyagi (sic) was a distressed bank, Telekom
20 Austria were two transactions which eventually, I think,
21 all of them got done while the Donatzeinmagi (sic), as
22 I can recall, didn't happen.

23 Q. And if you turn back to the page before,
24 section 1D.

25 A. Yes.

1 have enough traction from my teams to say yes, because
2 we had a budget we could spend so much on advisers. So
3 if we took one, we wouldn't have another one to maybe
4 start the new vertical, maybe to cover another country.

5 THE COURT REPORTER: Sorry, could you repeat the last bit?

6 A. We would have to decide as a team, the advisory M&A
7 team, how to spend the budget, being the person in
8 charge, it was in the end my duty to present the annual
9 budget, but also to manage the budget. So there were
10 times when the level of activity with one adviser did
11 not warrant a contract with a fixed amount, and so on.
12 So we would, say, use as a guideline the past but on
13 specific transactions you have to come to me and I will
14 sign off and sort of rejuvenate the old agreements with
15 the caveat that it may be without a fixed amount, with
16 a cap, you know, depending deal by deal.

17 I preferred, generally, to have contractors on,
18 because I had so many of them, just to remember what you
19 were doing with one or the other but it was, in the case
20 of Thomas and a few others, after a decade together we
21 could live with, sort of a play it by ear system. But
22 I would always go back to the person within Lehman, sort
23 of full time Lehman MD, and check that the work was
24 being done, that it was a realistic request.

25 Q. And so when his agreement expired how would his pay

1 is looking at.

2 BY MR. JOHNSON:

3 Q. Can I have you look at the supplemental declaration
4 of Dr. Thomas Marsoner.

5 THE COURT REPORTER: That is exhibit 6.

6 MS. ALVAREZ: Exhibit 6 to Peter Sherratt's deposition.

7 What exhibit was that to his motion?

8 MR. JOHNSON: It was a supplemental declaration.

9 MS. ALVAREZ: Okay. Are you going to point him to his
10 letter?

11 MR. JOHNSON: I am going to point him to his affidavit.

12 MS. ALVAREZ: The one he submitted to the court.

13 A. Mm-hm.

14 MR. JOHNSON: Do you recognize --

15 MR. HORWITZ: Just a minute, I have a copy of that.

16 BY MR. JOHNSON:

17 Q. Do you see your letter dated January --

18 A. Yes, yes, yes, yes, then I am getting the dates.

19 Q. Do you see the --

20 A. Yes.

21 Q. Well, just one second. Do you see the fifth
22 paragraph?

23 A. Five, yes.

24 Q. Does it say:

25 "With regards to the investment in Formula 1,

1 I specifically requested Dr. Marsoner's advice ... after
2 JP Morgan had rejected my suggestion of jointly
3 retaining him."

4 A. Yes, yes, yes.

5 Q. Is that an accurate statement?

6 A. Yes. I now remember the, yes, the occurrence. But
7 this is prior to the actual closing of the CVC deal.
8 Now I remember. There were two stages. The first, CVC
9 took the stake and then the two banks opted out after
10 BLB. If you remind me how the transaction went, because
11 I can't recall it, because we were three shareholders
12 plus Bernie Ecclestone. When CVC did the transaction
13 who did they buy out first?

14 Q. Well, let me just ask you a question. So you
15 referred to two banks?

16 A. JP Morgan, Lehman Brothers and BLB were the three
17 investors in, or investors who had seized the shares
18 from Kirch. CVC acquired control of Formula 1 and then
19 subsequently acquired an additional stake.

20 Q. Why did you request Dr. Marsoner's advice?

21 A. At the time there was a dilemma as to what to do,
22 whether to accept the proposal, but I can't remember if
23 it was the first purchase or the second purchase,
24 because the clients of Formula 1 and the teams headed
25 by, they were using Goldman Sachs at the time, but they

1 were voicing and saying that they did not intend to
2 continue with Formula 1 and they wanted to create
3 a rival event which technically they could have possibly
4 done, and obviously the value of Formula 1 would have
5 been completely different if some or most of the teams
6 migrated to another event.

7 So the issue was strategically was this asset going
8 to be a difficult one or was this all posturing, and all
9 it took was to tweak the margins and have them make
10 a little bit more money and change the team versus
11 Formula 1 split. And this had been going on for some
12 time, I recall. But when CVC came in it became even
13 more antagonistic from Mercedes, from, you know, the
14 leading teams.

15 Q. And who were the leading teams?

16 A. The leading teams were Mercedes, McLaren, Ferrari
17 to some extent, but at least it was the only one where
18 I had my direct contacts. But I didn't, because the
19 firm was not very strong in automotive, we didn't have
20 direct links, especially with the Germans and then
21 Goldman was trying its best to make sure we didn't have
22 access to anybody who sang outside of the choir.

23 I asked Thomas, and the other thing that I needed to
24 know from, you know, to give the firm some advice, was
25 where things stood with BLB, because, you know, it

1 A. Obviously in retrospect at the time the advice was
2 his understanding of the situation. In retrospect it
3 was right.

4 Q. To your understanding did Lehman Brothers rely on
5 Dr. Marsoner's advice?

6 A. I think this was debated at the investment
7 committee and as the pros and cons, and I think it was
8 one of the elements, certainly not the only element. If
9 I remember correctly the way that it was presented, as
10 I was saying before, it wasn't me presenting it, it was
11 either Jeremy Isaacs or Meissner.

12 Q. Okay.

13 A. As it was a European issue, where it was how much
14 money do we have this investment on the books at? How
15 much are we getting back, if we do at all? How much are
16 we getting, and they did the calculation how much, you
17 know, the firm needed as a capital gain -- capital gain;
18 writing back of an investment -- and how much we could
19 afford to, you know, take a punt on future values.

20 Q. And in your view do you believe Dr. Marsoner should
21 be paid for that advice?

22 MS. ALVAREZ: Objection to form.

23 A. I think, yes, he would be, he would have been paid,
24 I would say, in retrospect. I don't know the ins and
25 outs of what specific authorizations he, you know,

1 worked at the time but I think the firm would have taken
2 -- you see our agreements were the senior advisers were
3 very one sided. So I mean once there was a negotiation,
4 we could say okay, it is between X and Y, but then it
5 would be the sole discretion of the firm how much to
6 pay, and if you liked it you stayed, if you didn't like
7 it that was the way we worked. But on the other hand we
8 never left, we never asked for any advice, work and so
9 on to then not pay anything. It was just not done and
10 certainly under my watch it never happened. The
11 amounts, though, would be determined, even post facto.

12 Q. Was the type of advice he provided on F1 similar to
13 in the BAWAG transaction?

14 MS. ALVAREZ: Objection to form.

15 A. It was similar. It was similar in terms of advice.
16 The difference was that here it was an exit or not
17 an exit of an existing position. BAWAG was really
18 driven as an advisory mandate. You know, it was more of
19 an investment bank. Here, the firm owned a position,
20 willingly or unwillingly, and he provided advice in
21 terms of tactics, the same as BAWAG, but for a different
22 purpose.

23 Q. Do you know the Lehman entity used to reinvest in
24 F1?

25 A. No. I mean do I know it, maybe I knew, because --

1 Now, I want to look at what has been marked as
2 Pignatti exhibit 2, which is the letter you submitted to
3 the court, Mr. Pignatti, could we look at it again. And
4 on the second page, the very last paragraph, you state:

5 "It was my understanding that Dr. Marsoner would
6 have been paid by Lehman Brothers for his services
7 concerning the F1 investment or I would not have asked
8 him to help."

9 What was the basis for your understanding?

10 A. My understanding is that, as I think I mentioned
11 before, we had a long consolidated relationship with our
12 senior advisers which was regulated by contracts but
13 they were completely one sided. You might have read
14 them.

15 Q. Mm-hm.

16 A. It says if the firm decides that you had a major
17 involvement in a transaction. So completely left to our
18 discretion, the firm's discretion. And therefore we
19 were instructed to use this power, not
20 opportunistically, but bearing in mind that we had
21 a name, a future and we had to keep our senior advisers,
22 you know, happy.

23 Q. Mm-hm.

24 A. But within, you know, the boundaries of the
25 economic interests of Lehman. And therefore, as you can

1 see from previous emails and so on, any time we utilized
2 the senior adviser, not just myself, but also other
3 people on the team, and it was a large organization,
4 I wanted it to be flagged, because if we agreed to use
5 we would then remunerate. I cannot tell you how much,
6 it depended on our good will, on a discussion with
7 a person and so on, but we wouldn't utilize someone
8 outside of the contract to tell them thank you very
9 much, it was free help, and so on. Otherwise we would
10 not have been as successful as we were in retaining very
11 high caliber people for relatively low fixed amounts of
12 money.

13 Q. Okay. So when you got to that point, you realized
14 that someone needed to be remunerated, you would have
15 a conversation with that person about how much?

16 MR. JOHNSON: Objection. Leading.

17 A. Absolutely. I would have discussed the specifics
18 of something that was not in the contract and would have
19 had an internal discussion and then I would have gone
20 back with a response. It was a negotiation to a certain
21 point.

22 Q. Okay. And then ultimately you would need to get
23 approval from someone more senior?

24 MR. JOHNSON: Objection. Leading.

25 A. Depending on if it was the acquisition of a M&A

1 Q. Okay.

2 A. The second component of BAWAG was that the
3 mezzanine fund of the firm intended to invest, and if
4 they invested they were willing to pay a fee, sort of
5 a finders fee, for having been brought into this
6 investment opportunity, but that would have been 1
7 percent, or -- I can't remember what the amount was. So
8 those were the orders of magnitude.

9 Q. Okay. So it sounds like Dr. Marsoner was
10 instrumental in that BAWAG transaction?

11 A. He was. First, in securing a mandate for which we
12 were probably not the best qualified without him. And
13 then the mandate lasted for a long time. He managed to
14 bring to the Lehman mezzanine fund a position in the
15 financing. That was a typical thing that happened with
16 advisory mandates, many times, led to additional firm
17 revenues which were not in advisory.

18 Q. Okay.

19 A. Okay. Those were remunerated because the egg came
20 before the chicken and therefore, you know, the same
21 scale did not apply. So that would have been outside of
22 my powers, to add a fee for another division, risking
23 capital, because it was really up to them to say whether
24 they could afford, and how much. But I certainly made
25 sure that if they utilized the referral from an adviser

1 at the investment bank they would have to pay. I would
2 participate in the negotiation but I couldn't force them
3 to pay out of their budget more or less.

4 Q. Okay. So when the BAWAG transaction was completed,
5 Lehman and Dr. Marsoner came to an agreement regarding
6 how much he would be paid for his help?

7 MR. JOHNSON: Objection. Leading.

8 A. Yes.

9 Q. Now, you mentioned when you were explaining the
10 differences to me --

11 A. Mm-hm.

12 Q. -- that the sale of an asset situation is
13 different?

14 A. Yes.

15 Q. Formula 1, would that fall into that category of
16 transaction, sale of an asset?

17 MR. JOHNSON: Objection. Leading.

18 A. It was the sale of an asset and therefore there
19 wasn't a mandate originating fees for -- you know, we
20 were not getting paid, you know, inside of the
21 investment banking division there wasn't an advisory fee
22 of 3 million that Formula 1 was paying to Lehman.
23 Because we owned the company, or co-owned, we couldn't
24 charge any fees, so it would have come out of pocket
25 from the firm. Therefore it happened, you know, several

1 times.

2 Q. Mm-hm.

3 A. So it would have been calculated and it wouldn't
4 have been zero, you know, otherwise the firm would never
5 -- if I had received an email from a discontinued
6 adviser telling me "I want to do this", you know, "let
7 me give you advice", I would stop him straight away and
8 say I am sorry, but we spoke three weeks ago. I have
9 now socialized with the operating committee, I think we
10 have moved on. So I wouldn't use people for free,
11 especially if they had been with the firm for 10,
12 15 years --

13 Q. Mm-hm.

14 A. -- to lead them on. I would be quite firm and say
15 thank you very much, you know, bring it to Goldman
16 Sachs, these are great ideas, thanks. We wouldn't use
17 free help --

18 Q. Right.

19 A. -- from people with whom we had a relationship that
20 we still treasured in any shape or form. On the
21 advisory side we wanted to be promoted as the right bank
22 in an area or geography where we were not strong, we
23 wouldn't short change them or use them on something we
24 had no intention to use them, and that is my statement.

25 Q. Right, I understand that. So with Formula 1, who

1 involved, in our judgment, was the contribution and in
2 the following contract, or even in this one, I would say
3 as per 3.2.1 we now agree to pay you, you know,
4 a million dollars for securing the Formula 1 advisory
5 mandate, okay, something like that.

6 Q. Okay.

7 A. Not necessarily when it happened, the day, or don't
8 lift your pen until I have sent you a confirmation and
9 so on, okay.

10 Q. Okay.

11 A. But this refers to advisory contracts which were,
12 as I said, within my powers because my division was
13 paying it out of revenues, okay. So here the
14 USD 200,000 would have come out of my annual budget,
15 because it was a guarantee. And then anything else, you
16 will see, is really a success fee and therefore, which
17 is actually paid the moment the client sends the money
18 to settle the invoice. You know, so unless Telekom
19 Austria paid us the, I don't know, 7 million Euro
20 advisory fee, of which 700,000 would go to Mr. Marsoner
21 a month later, okay. But first the cash came in.

22 Q. Okay.

23 A. Okay. So --

24 Q. Let me ask you, you said the agreement is
25 dated July 24, 2002?

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
IN THE MATTER OF

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,

Debtors.

- - - - -
DEPOSITION OF PETER SHERRATT

VOLUME I

Friday, November 13th, 2015

AT: 1:00 p.m.

Taken at:

Hogan Lovells
50 Holborn Viaduct
London
EC1A 2FG
London
United Kingdom

CONFIDENTIAL

Court Reporter:

Chris Lang
Accredited Real-time Reporter

1 A P P E A R A N C E S

2 Appearing for the Deponent:

3 MAURICE HORWITZ, ESQ.
4 DENISE ALVAREZ, ESQ.
5 WEIL, GOTSHAL & MANGES LLP
6 767 FIFTH AVENUE
7 NEW YORK, NY 10153-0119
8

9 Appearing for Dr Thomas Marsoner:

10 M. SHANE JOHNSON, ESQ.
11 PIETER VAN TOL, ESQ.
12 HOGAN LOVELLS LLP
13 875 THIRD AVENUE
14 NEW YORK, NY 10022
15

16 Appearing for the Debtors:

17 THOMAS E. HOMMEL, ESQ.
18 LEHMAN BROTHERS HOLDINGS INC.
19 1271 AVENUE OF THE AMERICAS
20 NEW YORK, NY 10020
21

22 NOTARY: MICHELLE SCOTT-BRYAN

23 VIDEOGRAPHER:

24 WENDY VINER
25 Videographer

1 A. Well, I can only read what you can read. I mean,
2 I am not sure what you are asking me for here. It does
3 do that, according to how I read it.

4 Q. Were you not involved in those discussions to have
5 Dr. Marsoner?

6 A. Yes, indeed, I was, I would have been very happy
7 with Marsoner representing the three banks.

8 Q. And this is October 2002?

9 A. Yes. I remember, because Thomas and I got on well
10 and I respected him.

11 Q. And you thought he was knowledgeable about F1?

12 A. Yes.

13 MR. JOHNSON: Please mark that as exhibit 3.

14 (Exhibit 3 marked for identification)

15 Q. This is an October 22nd, 2002 email from Patrick
16 Bierbaum to Peter Sherratt, Victoria Pignatti and
17 Stephen Sleigh, at Lehman Brothers, copied Thomas
18 Bernard, Steve Hannan, and Patrick Schmitz-Morkramer.
19 And are you familiar with this document?

20 A. Well, this is the same as my last answer.
21 I haven't seen this since I left Lehman. I may well
22 have seen this at the time. It is very likely I would
23 have read this at the time.

24 Q. And do you see that you are listed as an addressee
25 on this email?

1 A. That was the entity, Alpha Topco originally and
2 then Delta Topco were the entities that I joined as
3 a director and they were the entities that owned
4 Formula 1.

5 Q. And I think you just said that, but you were
6 appointed as a director of Delta Topco Limited and Delta
7 Prefco Limited?

8 A. Yes, I was appointed to what you might broadly call
9 the board of Formula 1, but it was the holding company,
10 the relevant holding company.

11 Q. And you were appointed by Lehman Commercial Paper
12 Inc.?

13 A. I think technically you were appointed by the
14 company, so you join the board of the company as
15 an individual. But I did that representing the
16 shareholder, which was LCPI.

17 (Exhibit 8 marked for identification)

18 Q. This is a motion made by Lehman Commercial Paper
19 Inc. in the United States bankruptcy case to sell shares
20 of Delta Topco Limited and Delta Prefco Limited. Could
21 you please turn to exhibit B. This is a draft
22 consulting agreement?

23 A. Yes it is.

24 Q. Was a final executed version ever entered into?

25 A. Yes, I did enter into a consulting agreement.

1 MR. HORWITZ: Objection to form.

2 A. I did, yes.

3 Q. If you will go to exhibit C.

4 A. Yes.

5 Q. It is a letter agreement.

6 A. Mm-hm.

7 Q. Lehman Commercial Paper Inc.

8 A. Yes.

9 Q. Did you execute a letter of agreement substantially
10 similar to this one?

11 MR. HORWITZ: Objection to form.

12 A. Did I execute myself? Um, this looks like
13 a statement in which they will nominate me as a member
14 of the board.

15 Q. Sorry, yes. Did you know if --

16 A. I think LCPI did nominate me, yes, absolutely, and
17 I was appointed by those boards. I think it looks like
18 Jack McCarthy may have executed this.

19 Q. And are you still a director of these entities?

20 A. No I am not, no.

21 Q. When were you replaced?

22 A. I resigned in 2012. Although I did resign also for
23 a period, if you want the full -- to be, give you full
24 detail on that, I had a short period after the
25 bankruptcy in which I dropped out of the board because

1 I felt that it was, there was a potential serious
2 conflict of interest being on the board at a time when
3 other shareholders had the right to exercise their right
4 to buy out Lehman Brothers at that point. So I did
5 resign for a short period then and went back then on the
6 board in 2009, so there was a short break. But between
7 2006 and 2012 I was on the board, except for that short
8 break.

9 Q. Why did you resign in 2012?

10 A. Because I wanted to focus on my charitable
11 interests. I have a portfolio which is very time
12 consuming and I felt that I couldn't give enough time to
13 Formula 1.

14 Q. So isn't it correct that as a director of Delta
15 entities you were permitted to share certain information
16 with LCPI employees?

17 MR. HORWITZ: Objection to form.

18 A. I believe I was allowed to share some information,
19 but you would have to, I am afraid I would have to
20 recollect precisely what that information sharing
21 arrangement was. But I think there was an arrangement
22 there.

23 Q. See paragraph D of the letter agreement.

24 MR. HORWITZ: Objection to form.

25 A. Yes, the company's consent to the sharing by

1 Q. Could you turn to page 7 of the motion --

2 A. Yes.

3 Q. -- and look at paragraph 16. I am going to read
4 the first sentence of paragraph 16. It says:

5 "It is in fact undisputed that Dr. Marsoner provided
6 invaluable advisory services related to F1 that Lehman
7 could not have obtained from another source and that
8 based primarily on this advice Lehman reinvested in F1
9 in 2006."

10 Did I read that correctly?

11 A. You did.

12 Q. Do you agree that Thomas Marsoner provided
13 invaluable advisory services related to F1?

14 A. I think it was helpful to hear from Thomas. But
15 the primary reasons for reinvesting were this is a very
16 attractive company from a financial perspective. This
17 is a company with a potential for refinancing, if the
18 proper corporate governance could be put in place and
19 harmony could be restored in Formula 1, so it was able
20 to act with one voice rather than having three banks as
21 disparate shareholders. So CVC coming in was the
22 primary reason for reinvesting in my mind. Clearly we
23 had to do a lot of financial analysis around that, of
24 which the investment bankers, like
25 Patrick Schmitz-Morkramer, were really valuable in

1 understanding the value of the asset. And certainly it
2 was that hard nosed analysis of the asset that was the
3 most important decision in deciding whether to stay in.

4 We also respected CVC enormously and we knew that
5 they had a strong track record of private equity
6 investment and so that for me was a very significant
7 advantage in reinvesting.

8 So, you know, when I was thinking about it myself
9 and when I was briefing other people, they were the
10 things that I focused on. That was absolutely key.

11 But was there uncertainty about whether teams would
12 continue or have a breakaway series? Yes, there is
13 always that uncertainty and there was at that time. And
14 was it helpful in the overall picture? Yes it was. Was
15 it the primary reason? No it wasn't.

16 Q. Could you turn to exhibit E of that motion. We
17 will give you time to find it.

18 A. Yes.

19 Q. Could you turn to page 2 of exhibit E. I am sorry,
20 could you turn to page 3 of exhibit E.

21 A. Mm-hm.

22 Q. Do you see at the top of the email to Vittorio
23 Pignatti, to you and to Thomas Bernard?

24 A. Yes.

25 Q. It is dated November 26, 2005. Do you recognize

1 reveal where we were on it, because clearly that could
2 influence other people that we were negotiating with.
3 So yes, he would want to be quite guarded about it.
4 I think it means what it says.

5 Q. Did this email influence your decision not to sell
6 your stake in Formula 1?

7 A. My personal?

8 Q. Or Lehman, the work out team's?

9 A. The one going from Thomas -- Tom Bernard to Thomas?

10 Q. The one from Thomas to Tom Bernard.

11 A. Which?

12 Q. Tom Bernard says "we're inclined to take your
13 advice".

14 A. Yes.

15 Q. Did that advice influence your decision?

16 A. I think the position with Thomas' input was that it
17 was helpful. It is very, very useful when you are
18 looking, as Tom said, you are in the discovery mode when
19 you're looking at it, absolutely, it is very, very
20 useful to take into account all of your different
21 sources and you would need to ask Tom what his balance
22 of opinion was. But all I can say is that from our
23 perspective and from the people that I spoke to, I was
24 never in any doubt that we should stay in and I know it
25 sounds easy to say that now, but that is what happened,

1 because I thought CVC would bring the corporate
2 governance that Formula 1 so badly needed.

3 Q. Okay, I am going to show you just one other
4 document that has not been marked as an exhibit yet. We
5 will mark this exhibit 9.

6 (Exhibit 9 marked for identification)

7 MR. HORWITZ: Do you need another copy?

8 MR. JOHNSON: No.

9 A. This is then exhibit, is it? I keep that one and
10 I give it you back at the end.

11 THE COURT REPORTER: Yes.

12 BY MR HORWITZ:

13 Q. If you turn to the second page of this document, do
14 you see on the bottom right-hand corner of the document,
15 it says "Marsoner 00000197"?

16 A. Yes I do.

17 Q. Can you turn to the second page. There is an email
18 in the middle of the page from you and it is
19 dated October 3, 2014 and it says, starts on the second
20 paragraph:

21 "My view is that the claim on LBEL isn't justified.
22 We both know there was no agreement to pay you relating
23 to F1. You are a highly intelligent and meticulous
24 person, and would have put in a claim years ago if you
25 believed in it."

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Chapter 11 Case
CASE NO. 08:13555 (SCC)
Ref. Docket Nos. 4271, 4349

IN RE:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

TRANSCRIPT OF
DEPOSITION OF ANGHARAD BOWDLER

TRANSCRIPT of the stenographic
notes of the proceedings in the
above-entitled matter, as taken by and
before TAB PREWETT, a Registered
Professional Reporter, a Certified
Shorthand Reporter, a Certified LiveNote
Reporter, and Notary Public, held at the
Offices of WEIL, GOTSHAL & MANGES LLP, 767
Fifth Avenue, New York, New York, on
Wednesday, December 2, 2015, commencing at
1:15 p.m.

1

2 A P P E A R A N C E S:

3

4

WEIL GOTSHAL & MANGES LLP
BY: MAURICE HORWITZ, ESQ.
DENISE ALVAREZ, ESQ.

5

6

767 Fifth Avenue
New York, New York 10153-0119
Attorneys for
Lehman Brothers Holdings, Inc.

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HOGAN LOVELLS LLP
BY: M. SHANE JOHNSON, ESQ.
875 Third Avenue
New York, New York 10022
Attorneys for Dr. Thomas Marsoner

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ALSO PRESENT:

23

Mark Euler, Esq.
Senior Legal Counsel
EPIQ Systems
Present Telephonically

19

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28

29

30

1 Angharad Bowdler

2 incorrectly listed. Yes.

3 Q Isn't it possible that there
4 were other errors in the service of party
5 notice?

6 MR. HORWITZ: Objection to the
7 form.

8 A I am not aware of any other
9 errors.

10 Q Now, EPIQ attempts to send
11 notice to a creditor's last known address,
12 correct?

13 A That's correct.

14 (Exhibit No. 4, E-Mail with
15 attachment, E-Mail dated 7/19/08 from
16 Aaron O. Johari to Guy Reynolds and
17 others, Bates Nos. LEH 384 to 395, is
18 marked by the reporter for
19 identification.)

20 Q This is an E-Mail from Aaron
21 Johari at Lehman Brothers to a number of
22 people at Linklaters and Bruce Railton and
23 Marco Pierettori at Lehman Brothers, dated
24 September 19, 2008.

25 This was after LBHI had filed

1 Angharad Bowdler

2 Q If you flip to the second page,
3 there's an attachment to the E-Mail. It's
4 an agreement with Dr. Thomas Marsoner and
5 Lehman Brothers Europe Limited, dated
6 October 5, 2007.

7 Do you see that?

8 A Yes.

9 Q Do you see the address listed
10 in the top left-hand corner for Thomas
11 Marsoner?

12 A Yes.

13 Q But he wasn't sent notice at
14 this address; is that correct?

15 A Just a minute. Let me make
16 sure. No, he was not.

17 Q But this agreement was in
18 Lehman Brothers's E-Mails; is that correct?

19 MR. HORWITZ: Objection to the
20 form.

21 A From the E-Mail that you have
22 presented, I can see that, but I have never
23 seen this document before.

24 Q Shouldn't he have been sent
25 notice at this address?

1 Angharad Bowdler

2 MR. HORWITZ: Objection to the
3 form.

4 A I actually don't know the
5 answer to that. Some creditors have
6 multiple addresses, and noticing addresses
7 and attorneys that represent them -- in
8 general, we pull every address available
9 for the creditor, or the financial advisor
10 would do so.

11 Q So Alvarez didn't pull this
12 address for you?

13 MR. HORWITZ: Objection.

14 A This address was not provided
15 to EPIQ to my knowledge.

16 Q Do you know why it wasn't
17 provided?

18 A No, I do not.

19 Q If Alvarez had sent this
20 address to you, would you have sent
21 Dr. Marsoner notice at this address?

22 MR. HORWITZ: Objection to the
23 form.

24 A Yes, if it was provided, we
25 would have sent it to this address.

1 Angharad Bowdler

2 Q Okay. Does EPIQ consider it
3 good practice to send notice to vacation
4 addresses?

5 A We are not aware of different
6 addresses and what they represent for the
7 creditor, so I don't have an opinion on
8 that.

9 Q So in other words, you don't
10 check if an address is a vacation address?

11 A No.

12 Q You don't check if it's a
13 temporary address?

14 A No, nor is that information
15 provided to us.

16 Q Well, I mean, you don't do an
17 independent check?

18 A No, we do not.

19 Q So the same could be said for
20 addresses that are no longer valid?

21 MR. HORWITZ: Objection to the
22 form.

23 A I'm sorry. I am not sure what
24 the question is.

25 Q You don't do an independent

1 Angharad Bowdler

2 check on the validity of an address?

3 MR. HORWITZ: Objection to the

4 form.

5 A We don't confirm that the

6 address is correct for that creditor. If

7 solely a name is provided or a partial

8 address that would not be mailable, that we

9 may send back to the party that provided it

10 to us to request additional detail.

11 Q So if you are provided a full
12 address, you don't independently check it?

13 A That's correct.

14 Q Would you check to make sure
15 you are not sending a notice to a former
16 affiliate's address, former affiliate of
17 Lehman Brothers?

18 A No, we would not check that.

19 Q Because essentially Alvarez
20 provides you the addresses, and, as long as
21 they are full address, you don't check
22 them?

23 A That's correct.

24 Q If you could look at Exhibit 3,
25 "Corrected Affidavit of Service," in the

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN THE MATTER OF

IN RE:

LEHMAN BROTHERS HOLDINGS INC.,

et al.,

Debtors.

-----x

December 22, 2015

9:28 a.m.

Deposition of STEVEN KOTARBA, held at
the offices of Weil, Gotshal & Manges LLP,
767 Fifth Avenue, New York, New York 10153,
before Roberta Caiola, a Shorthand Reporter
and Notary Public within and for the State
of New York.

1 A P P E A R A N C E S:

2

3 Appearing for Lehman Brothers:

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5 DENISE ALVAREZ, ESQ.

6 WEIL, GOTSHAL & MANGES LLP

7 767 Fifth Avenue

8 New York, New York 10153-0119

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10 Appearing for Dr. Thomas Marsoner:

11 M. SHANE JOHNSON, ESQ.

12 PIETER VAN TOL, ESQ.

13 HOGAN LOVELLS LLP

14 875 Third Avenue

15 New York, New York 10022

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1 Steven Kotarba (12-22-15)

2 Q. If you identify a person as going
3 on the master mailing address and you find
4 another address for them, would you include that
5 as well?

6 MR. HORWITZ: Objection to form.

7 A. Typically we would, yes.

8 Q. Why wouldn't you in all instances?

9 A. Again, it's hard to give absolute
10 answers. If for some reason there was an
11 indication that that address, you know, wasn't
12 accurate or shouldn't be used we wouldn't
13 include it. But I agree with your earlier
14 statement, that typically if we have two
15 addresses we would serve both addresses.

16 Q. In compiling this master mailing
17 address you said that you spoke with Lehman
18 Brothers' employees?

19 MR. HORWITZ: Objection to form.

20 A. Certain employees with respect to
21 the filing debtors, yes.

22 Q. Does this also include former
23 employees?

24 A. I don't believe. It's difficult to
25 recall. I don't believe we talked to former

1 Steven Kotarba (12-22-15)

2 from.

3 Q. Do you see the person listed in the
4 from?

5 A. I do.

6 Q. That's a Lehman Brothers' employee?

7 MR. HORWITZ: Objection to form.

8 A. It appears to be, yes.

9 Q. So wouldn't this be in Lehman
10 Brothers' records?

11 MR. HORWITZ: Objection to form.

12 A. I have no way to tell that sitting
13 here today. It likely would be, but I don't
14 know.

15 Q. Wouldn't emails from employees be
16 in the records?

17 MR. HORWITZ: Objection to form.

18 A. I don't handle Lehman's email
19 systems.

20 Q. Do you have any reason to doubt
21 that this came from Lehman Brothers' files?

22 A. No.

23 Q. I believe you testified earlier
24 that when you compile names and addresses for
25 the master mailing list, you include every

1 Steven Kotarba (12-22-15)

2 address that Alvarez comes across for an
3 individual?

4 A. I would say as a rule that's
5 accurate, yes.

6 Q. So this address should have been
7 listed in the master mailing list?

8 MR. HORWITZ: Objection to form.

9 A. If we would have come across it we
10 likely would have included it.

11 Q. You testified earlier that Alvarez
12 checks Lehman Brothers' books and records for
13 addresses?

14 A. Yes, the books and records are the
15 filing entities.

16 Q. If you can turn back to Behnke's
17 declaration, Exhibit 4?

18 A. I'm there.

19 Q. Turn to paragraph 6. It says,
20 "Since the commencement of LBCC's Chapter 11
21 case, Marsoner has never contacted LBCC with
22 respect to an executory contract, the Trade
23 Confirm or any other contract or transaction."
24 Do you see where it says that?

25 A. I do.

1 Steven Kotarba (12-22-15)

2 MR. JOHNSON: Who headed those two
3 categories I guess.

4 Q. Earlier I believe you also
5 testified that the criteria for including
6 somebody on the master mailing list was any
7 interaction with the debtors, is that correct?

8 A. I don't know if I would categorize
9 it that way. We ask certain questions of
10 certain people to prepare the mailing list, if
11 we receive responsive information we would then
12 include them on the master mailing list.

13 (Record read.)

14 Q. So then it's true that interactions
15 were the key to being on the master mailing
16 list?

17 MR. HORWITZ: Objection to form.

18 A. Interactions that were identified
19 to us were one of the criteria that would lead
20 to being listed on the mailing list, that's
21 correct.

22 Q. I believe earlier you also
23 testified that when Alvarez found an address it
24 would be included, unless the address were
25 incorrect?

1 Steven Kotarba (12-22-15)

2 expect that they would have done that, yes.

3 Q. So Alvarez doesn't check to
4 determine if an address is a vacation address?

5 A. That's correct.

6 Q. It doesn't check if it's a working
7 address, is that correct?

8 A. Other than my previous comments,
9 that's correct.

10 Q. If you could turn back to the
11 Corrected Affidavit of Service, Exhibit 3.

12 Do you see on the last page, page
13 611 of 1048, an entry for Marsoner Thomas, S. is
14 listed at the very bottom?

15 A. I see that.

16 Q. The address is listed as One
17 Broadgate, 5th floor, London, EC2M 7HA United
18 Kingdom?

19 A. That's correct.

20 Q. Isn't this LBEL's former address?

21 A. I believe that's correct, yes.

22 Q. So they were no longer at that
23 address in 2009?

24 A. I don't believe they were.

25 Q. Yet, this address was still

Thomas A. Behnke

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- X

IN RE:)	
)	Case No:08:13555
LEHMAN BROTHERS HOLDINGS, INC.,)	(SCC)
et al)	
)	Ref Docket Nos:
)	4271, 4349
)	
----- X		

DATE: January 11, 2016

TIME: 9:30 a.m.

DEPOSITION OF THOMAS A. BEHNKE, held
at the offices of Weil Gotshal & Manges, LLP, 767
Fifth Avenue, New York, New York, pursuant to
Notice, before Hope Menaker, a Shorthand Reporter
and Notary Public of the State of New York.

1 Thomas A. Behnke

2 A P P E A R A N C E S

3 WEIL GOTSHAL & MANGES, LLP

4 Attorneys for Lehman Brothers Holdings, Inc.

5 767 Fifth Avenue

6 New York, New York 10153-0119

7 BY: MAURICE HORWITZ, ESQ.
DENISE ALVAREZ, ESQ.

8

9 HOGAN LOVELLS, LLP

10 Attorneys for Dr. Thomas Marsoner

11 875 Third Avenue

12 New York, New York 10022

13 BY: M. SHANE JOHNSON, ESQ.
PIETER VAN TOL, ESQ.

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1 Thomas A. Behnke

2 A. I have no reason to dispute that it
3 was an invoice sent to Lehman Brothers Europe
4 Limited which is the party to this contract.

5 Q. So isn't it true that the Debtors did
6 have access to an agreement between Dr. Marsoner
7 and LBEL?

8 A. No, I can't say it is true, but if
9 you say that this was produced by us --

10 Q. Yes, that is what I have said; that
11 it was produced by your counsel in this
12 proceeding.

13 A. Then I guess they had access to this
14 in an e-mail form.

15 Q. Thank you.

16 If we could look at Paragraph 6 of
17 your declaration, it says, "Since the commencement
18 of LBCC's Chapter 11 case, Marsoner has never
19 contacted LBCC with respect to an executory
20 contract, the trade confirm or any other contract
21 or transactions."

22 Do you see where it says that?

23 A. That's correct.

24 Q. I think you testified earlier you
25 don't have personal knowledge of the mailing of